IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

SILVER KING COALITION MINES COMPANY, *Petitioner,*	
vs.	No. 489.
CONKLING MINING COMPANY, *Respondent.*	

MOTION

Comes now William C. Prentiss and showing to the Court that the questions of boundaries of a mining claim patented between 1891 and 1904 and extralateral right on a cross-vein, involved in said cause, are of great and general interest and concern, and that review by this Court of the rulings of the Circuit Court of Appeals is essential to the quieting of titles disturbed by such rulings and to the settling of the law as to extralateral right on a cross-vein, moves the Court for leave to submit, as *amicus curiae,* the accompanying Brief on said questions.

WILLIAM C. PRENTISS.

Washington, D. C.,
September 24, 1919.

INDEX

TABLE OF CASES CITED

BRIEF

On the Subjects of Boundaries of a Patented Mining Claim and Extralateral Right on a Cross-Vein

STATEMENT

This was a suit regarded by the Circuit Court of Appeals as one to quiet title and for accounting. Pursuant to stipulation the question of title was first tried and judgment for the defendant was entered in the District Court. On appeal the Circuit Court of Appeals reversed the trial Court and remanded the case for an accounting (230 Fed. 553). Application to this Court was then made for the writ of certiorari to review the foundamental questions of mining law—as to boundaries and extralateral right—involved in the question of title. The respondent, in its brief in opposition to the petition (pp. 2-5), made an eloquent plea to this Court to postpone the granting of the writ until after the accounting should be had and a final decree rendered, in order that it might use valuable evidence then available but which might be irretrievably lost by delay.

This Court denied the writ without assigning cause, but it may well be that such plea of the respondent was the moving factor.

However that may be, the accounting has been had, resulting in a decree for over $500,000, which has been added to, on appeal, by the Circuit Court of Appeals, and the case is now here on appeal allowed by that Court and also on a second petition for the writ of certiorari.

It is of vital interest to the mining world that this Court take cognizance of the case and review the rulings of the Circuit Court of Appeals on the fundamental questions of

boundaries of a mining claim patented between 1891 and 1904, and extralateral right on a cross-vein, to the end that the law on those subjects may be settled and titles, now clouded by the rulings in question, may be quieted, and that the land department in acting upon applications for patent and having to identify the boundaries of mining claims patented between 1891 and 1904, and in segregating such patented claims in making the general public surveys, may have the judgment of this Court to guide it.

The subject matter of controversy was a body of ore in the so-called Elephant Stope, the bulk of which was in the 135-foot strip within the boundaries of the Custer No. 2 and Silver Hill No. 4, senior locations but junior patents (see diagram in record and in petition and brief).

The Conkling Company claimed that by the recital in the Conkling patent (junior location but senior patent) calling for 1500 feet in length without mentioning the official monuments at corners Nos. 3 and 4 (in accordance with the practice which was followed from 1891 to 1904), its boundaries extended the full 1500 feet, notwithstanding the west end line as fixed by the officially monumented corners Nos. 3 and 4 may have been 135 feet short of that distance, and took that 135-foot strip from the Custer No. 2 and Silver Hill No. 4.

The Silver King Coalition Company claimed the 135-foot strip as part of the Custer No. 2 and Silver Hill No. 4, contending that the official corner monuments of the Conkling Survey fixed the west end line of that claim as located, applied for, and patented; and also claimed the ore in the 135-foot strip and the portion east of that strip (see diagram) as being on the dip of the Crescent fissue vein apexing in and crossing the Constitution, Cumberland and Monroe Doctrine patented lode claims owned by it (see diagram).

I.

The ruling of the Circuit Court of Appeals that the Conkling patent was a grant of 1500 feet and not of the claim as officially monumented, affects some 20,000 mineral patents, and is subversive of the following fundamental principles theretofore regarded as well settled:

1. That *a lode location is bounded and limited by the corner stakes or monuments as placed by the locator*, notwithstanding he may claim in his location notice or certificate a length or breadth in excess thereof.

2. That proceedings for patent are *in rem* and the *res* is the *area identified and fixed by the monuments of the official survey*, which must be identical in position with the locator's stakes or monuments or within the boundaries fixed thereby.

3. That the function of so officially fixing and marking the boundaries of the *res* is vested in the *Surveyor General* (R. S. 2325; Shaw v. Kellogg, 170 U. S. 312).

4. That the *res* so identified and officially monumented becomes a subdivision of the public surveys and is given a lot number which in itself is a sufficient description.

5. That the essentials of jurisdiction *in rem*—the posted and published notices of application—and the application itself, relate to such officially monumented and numbered lot.

6. That the receiver's receipt for the purchase money, in the nature of a memorandum of sale, sufficiently describes the *res* by the lot number without description of the boundaries.

7. That the register's final certificate of entry, which passes the equitable title as between the entryman and the United States and which, as to third persons, is the equiv-

alent of a patent, likewise sufficiently describes the *res* by the lot number without description of the boundaries.

8. That the issuance of the final certificate is the judgment in the proceedings *in rem* (El Paso Brick Company v. McKnight, 233, U. S. 250, at 257).

9. That after the issuance of final certificate there remains only the *supervisory* jurisdiction of the Commissioner and Secretary who may, for proper cause, cancel the entry in whole or in part, but are without power to expand it beyond the *res* as to which jurisdiction attached, the lot as officially moumented.

10. That *the issuance of patent is a purely ministerial act*, to add the bare legal title to the equitable title.

11. That in issuing the patent the duty, power, jurisdiction and intent of the land department are directed, limited and confined to the *res*, the officially monumented and numbered lot, as to which the equitable title passed by issuance of the final certificate.

12. That where, as in the present case, the patent (written in accordance with the practice, in force from 1891 to 1904), refers to the official survey, plat, field notes and lot number and then gives a description of boundaries condensed from the field notes, wherein corners are referred to without mention of the official corner monuments, the reference to corners intends the official corners monumented as described in the field notes.

13. That in ascertaining the *locus* conveyed by mineral patent it is not a question of intent of the grantor, but merely of identifying the *res* of the proceedings in *rem*, the officially monumented and numbered lot.

14. That the *locus* is identified by the official monuments in place.

15. That the Brooks Act of 1904, amending R. S. 2327, was merely reiterative of the provision as to monuments in R. S. 2325 and declaratory of existing law.

16. That it is only when official corner monuments and witness objects have disappeared or are in doubt that the courses and distances function and, even then, *not as fixing the boundaries* of the "lot," but *merely as aids* in establishing the true positions in which the official monuments were set.

17. And that a controversy as to the genuineness of a monument alleged to be the official monument or as to the original and true position of the official monument, raises merely an issue as to which the ordinary rules of evidence and burden of proof apply, and which, in case of doubt, is to be resolved by a fair preponderance of the evidence.

The following brief exposition of

The nature of mineral (lode) patent and the proceedings culminating in its issuance, the practice in respect of the form of mineral patent between 1891 and 1904, the principles governing the identification of the locus of a patented mining claim, and the misapprehension thereof by the Circuit Court of Appeals,

is respectfully submitted.

Patent for a lode mining claim is the culmination of a succession of precedent steps—some by the applicant and some by the officers of the Land Department—some prescribed by statute and some by regulation—in proceedings *in rem*.

The initial step is the discovery of a lode and location of claim. By custom the location is given a name.

The statute (R. S. 2324) requires that the location shall be *distinctly marked on the ground so that its boundaries may be readily traced*, and that "all records of mining claims hereafter made shall contain * * * such a description of the claim or claims by reference to some

natural object or permanent monument as will identify the claim."

The *locus* and limits of the claim are thus originally fixed by the monuments placed by the locator, even though the notice of location claim a greater length or width. 3 Lindley on Mines, 3d ed., sec. 371, p. 782, and cases cited.

The locator may stop there and hold by possessory title.

If he desire to apply for patent the next step is procurement of official identification and monumenting of the boundaries of the claim as staked or monumented by the locator, through a survey made by a Government officer (Waskey v. Hammer, 223 U. S. 85) under the supervision of the U. S. Surveyor General (see form of application for survey, 3 Lindley on Mines 3d ed., page 2602). The area so officially identified and monumented is the *res* of the subsequent proceedings.

The statute (R. S. 2325) requires a plat and field notes of the claim made by or under the direction of the U. S. Surveyor General, *"showing accurately the boundaries of the claim which shall be distinctly marked by monuments on the ground."*

The function of identifying and monumenting the boundaries of the *res* of the proceedings is thus vested in the Surveyor General (Shaw v. Kellogg, 170 U. S. 312). After his function is performed, the boundaries or extent of the claim are not the subject of inquiry. All subsequent steps, including the issuance of the patent, have relation to the *res* so officially and finally identified.

The rules and regulations governing such surveys, in force when the Conkling claim was surveyed, prescribe with minuteness the character and markings of the official posts or other monuments to be set at the corners and, as additional safeguards, markings to be put upon nearby trees, rocks, or other permanent and prominent objects, as evi-

dences of the position of the corner monuments; and all of the monuments and witness objects, with their inscriptions, are required to be fully described in the field notes of the survey; and the official surveyor is required to certify that the survey as reported by him embraces the identical ground described in the notice of location *and found within the locator's corner stakes or monuments on the ground.* If the locator has included more than the permissible length or width, or has not gotten his end lines parallel, the surveyor corrects the error by drawing in one or more of the corners and is required in his field notes to connect the locator's original monuments by course and distance with the corresponding officially monumented corners.

In the survey the corners are numbered and the monuments are marked correspondingly and with the number of the survey and in his field notes the surveyor returns the courses and distances of the corners one from another, beginning with number one. The function of courses and distances is to check the dimensions of the location and furnish aid in finding the corner monuments and data for calculating the area as the measure of the purchase price at five dollars an acre.

A corner of the claim is required to be connected by a tie to a public survey corner or some prominent and permanent object, such as a U. S. mineral monument.

The claim as so surveyed, identified and monumented retains its name, which becomes official, and in addition is given the official survey or lot number which in itself is a sufficient description, just as a section in the general public land surveys is effectively described by number.

The official plat required by the statute is prepared from the field notes. From an early day such plats were prepared upon a lithographed official form (4-675) bearing upon the margin notation of the name of the claim and

the lot number and certificate by the Surveyor General that the original field notes of the survey of the claim "from which this plat has been made under my direction have been examined and approved and are on file in this office, and I hereby certify that they furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof." (See R. S. 2325.)

(On the official plat of the Conkling claim, on file as part of the public survey records in the General Land Office, the corners are designated by notation as "*Post* No. 1," "*Post* No. 2," "*Post* No. 3," and "*Post* No. 4.")

At this point the essential to exercise of jurisdiction—notice—is provided for. The claimant, intending to apply for patent, is required (R. S. 2325) to post a copy of the official plat, together with a notice of application for patent, in a conspicuous place on the land. The regulations (1881, par. 29) specify the contents of the notice (see form of notice, Sickels Mining Laws and Decisions, 1881, p. 640; 3 Lindley on Mines, 3d Ed., p. 2309).

The next step is the filing of the application for patent "together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States Surveyor General showing accurately the boundary or boundaries of the claim or claims which shall be distinctly marked by monuments on the ground" (R. S. 2325). See form of application, Sickels Mining Laws and Dec., p. 639.

The statute (R. S. 2325), as a further essential to exercise of jurisdiction, requires that upon the filing of the application, plat, field notes, etc., the register shall publish a notice of such application in a newspaper and also post

such notice in his office. The Regulations (par. 35) direct that the notice so published and posted shall be as full and complete as possible and embrace all the *data* given in the notice posted on the claim. (See forms of such notice, Sickels Min. Laws & Dec., p. 1647, Form S; 3 Lindley, 3d ed., p. 2612).

As a matter of custom and practice the notice posted on the claim and the notice published and posted in the land office, after referring to the survey or lot number and the field notes, gave a description of the boundaries condensed from the field notes.

The public in general and owners of any conflicting locations in particular are thus given notice that the jurisdiction of the land department in *rem* is invoked to grant the applicant a patent for the specific claim or lot as officially surveyed, identified and monumented.

> *"Under the law, jurisdiction depended upon giving notice by publication in a newspaper, by posting in the land office, and by posting on the land itself,*—the statute directing how the giving of such notice should be proved." El Paso Brick Company v. McKnight, 233 U. S. 250 at 259.

As the statute authorizes application only for the claim as officially monumented (R. S. 2325), claimants of adjoining or conflicting locations measure their rights by the positions of the official corner monuments on the ground and act, or rest in assurance that their rights are not invaded, accordingly as those monuments disclose conflict or absence of conflict with their locations.

If no adverse claim to any part of such carefully identified, monumented, named, and numbered claim or lot be filed, the applicant, upon furnishing the evidence specifically enumerated in the statute and regulations—certificate of $500 in improvements, proof of publication and posting,

etc. (see all required evidence succinctly scheduled, 3 Lindley, 3d ed., page 1734, and similar schedule in "The Public Domain," at page 1013), and filing an application to purchase the lot, designating it by number (Form 4-011, "The Public Domain," p. 1014), and paying the purchase price, is permitted to make entry, so-called, and receives a receipt in the nature of a memorandum of sale (Form 4-145, "The Public Domain," p. 1014), as follows:

"United States Land Office at....., Mineral Entry No. ....., Lot No. .....

..... 18.

"Received from ..... the sum of ....dollars, the same being in full for the surface area embraced by survey No. ....., in the ..... of section ....., in township No....., of range No..... meridian, said mineral claim or lot of land being situate in ..... mining district, county of ..... and .....of ....., and known as the ..... mining claim embracing ..... acres, as shown by said survey.

$.....

....."

Receiver.

And the register issues final certificate of entry (Form 4-201, "The Public Domain," p. 1014), as follows:

"United States Land Office at ....., Mineral Entry No....., Lot. No.....

..... 188.

"It is hereby certified that, in pursuance of the mining act of Congress, approved July 25, 1866, and the acts amendatory thereof, approved July 9, 1870, and May 10, 1872, ..., whose post-office address is ....., on this day purchased that mineral claim or lot of land designated as survey No....., in the ..... of section ....., in township No....., of range ..... meridian, situate, lying and being in the ..... mining district, in the county of ..... and ..... of.....

....., known as the ..... mining claim, embracing ..... linear feet, with ..... acres of surface ground, as shown by said survey, for which the said ..... have this day made payment to the receiver in full, amounting to the sum of ..... dollars.

"Now, therefore, be it known, that, upon the presentation of this certificate to the Commissioner of the General Land Office, together with the plat, survey, and description of said claim, a patent shall issue thereupon to the said ..... if all be found regular.

.....

"Register."

It will be observed that the courses and distances are not set out in these documents, yet the action of the local officers in issuing them, in the nature of a judgment in *rem* (El Paso Brick Company v. McKnight, *supra*, at page 257), passes the equitable title (id) as between the Government and the entryman, and as to third persons is the equivalent of patent. Thereafter the United States holds the bare legal title to the *lot* in trust for the entryman.

The local officers having thus exercised and exhausted their jurisdiction, there remains only the *supervisory* jurisdiction of the Commissioner and Secretary, who may, for proper cause, cancel the entry in whole or in part, but are without power to expand it beyond the officially monumented lot, as to which the jurisdictional notice was given.

Should it be made to appear that, through error or mistake, the official monuments, as placed by the surveyor, embrace less than the area actually and lawfully located, the Department may order an *amended survey and new posting and publication of notice* so as to confer jurisdiction over the enlarged area—in other words, proceedings *de novo*.

But if the entry be not disturbed, the final step is the purely *ministerial* act of executing and recording a formal

patent to add the legal title to the equitable title.

If the Commissioner or Secretary, in the absence of any defect in the proceedings, should arbitrarily withhold patent, the Courts would, by mandamus, compel the issuance of the patent as a purely ministerial act, and the patent issued pursuant to the Court's mandate would convey the specific *res* as to which the equitable title had passed, viz: the officially surveyed, monumented, named and numbered *lot*.

Obviously, therefore, the duty, power, jurisdiction and *intent* of the Land Department in performing the *ministerial* act of drafting and issuing the patent, are directed, limited and confined to the *res* as to which its jurisdiction was invoked, as to which compliance with the statutory requirements as to notice conferred jurisdiction, and as to which the equitable title had passed, viz: the named and numbered *lot* as officially monumented.

The Form of Mineral Patent and the Practice Between 1891 and 1904

The statute (R. S. 2325) requires that the applicant shall file a certificate of the Surveyor General—

> "that the plat is correct, with such further description by reference to the natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, *to be incorporated in the patent.*"

As description by name and *lot* number in the certificate of entry suffices to pass the equitable title, it is obvious that like description in the patent would suffice to pass the bare legal title.

In early patents, in addition to the name and lot number and reference to the official plat and field notes and register's final certificate, the description in the field notes was set

out, *in extenso*, as would seem to be contemplated by R. S. 2325.

This practice made the patents lengthy and later, in the interest of economy of time and record space, a condensed or abbreviated description was inserted instead of the full field notes.

Until 1903 mineral patents were written in the mineral division of the General Land Office and under date of April 28, 1891, the chief of that division issued "Directions for the Preparation of Mineral Patents," wherein, among other things, it was said:

> "1. Give all markings and bearings at corner No. 1 and the corner to which the claim is tied to a monument or corner of the public surveys: omit all markings and bearings at other corners."

The original of this order cannot be found in the General Land Office. What purports to be a copy thereof reposes in the office of the Recorder of the General Land Office to which the writing of mineral patents was transferred from the mineral division in 1903. A photostat copy thereof (which the General Land Office declines to certify as a copy of the original order) is submitted herewith and printed as Appendix A hereto.

But, aside from the authenticity of that copy, the practice prescribed thereby was followed until the matter came to the attention of the office of the Secretary in 1904.

Under date of August 8, 1904, the then Acting Secretary addressed a communication to the Commissioner (a certified photostat copy of which is submitted herewith and printed as Appendix B hereto), wherein he said:

> *"In this connection, it may be remarked that a mineral patent is with the record in a mining case on appeal here, in which but one monument, stated therein to be situate at corner No. 1 of the claim there in question, is found to be mentioned, notwithstanding*

four monuments are referred to and described in the report of the deputy mineral surveyor accompanying the approved survey of the claim, as marking the four corners of the claim upon the ground. It has also been informally reported to the Department that the practice has prevailed in your office, to a greater or less extent, of issuing mineral patents in which no mention whatever is made of any of the monuments reported and described by the deputy mineral surveyors.

"Your attention is directed to the requirements under section 2325, Revised Statutes, that an applicant for mineral patent shall file with his application—

a plat and field notes of the claim or claims in common, made by or under the direction of the United States Surveyor General, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground,—

and that within the sixty-day period of publication he shall file a certificate of the Surveyor General—

that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, *to be incorporated in the patent.*

"In view of the foregoing, and of the provision of the mining regulations pursuant thereto, it is to be observed that *the practice referred to is unauthorized and unwarranted.* Hereafter, *your office will be careful to include in every mineral patent* an adequate and accurate description of such of the monuments reported in connection with the survey of the claim for which the patent is to issue, and to state at the appropriate point in the instrument the particular corner reported to be marked or witnessed on the ground by each monument, and will also include therein such additional bearings as may be reported in connection with any such monuments, description of reported points of intersection with other approved surveys, and, generally, all data with respect to the designation of the actual *locus* of the claim prescribed under or in con-

nection with paragraphs 34, 36, 38, 48, 143, 144, 145, 146, and 184, of the Mining Regulations, as far as set forth in the report of the Mineral Surveyor. This requirement will apply to all mineral patents not yet issued from your office. In any case in which the report of a deputy mineral surveyor should contain no mention and description of monuments as defining the boundaries of a claim upon the ground, patent will be withheld uptil the claim shall be shown to have been so defined, as required by the law and official regulations, and the monuments are particularly described in a supplemental report, duly approved by the Surveyor General."

There is also submitted herewith and printed as Appendix C hereto, a certified photostat copy of a communication from the Recorder to the Commissioner, under date of August 27, 1904, in which he said:

"Regarding the order of the Honorable Secretary of the Interior, dated August 8th, directing a change in the form of mineral patents, *I have the honor to report that the present form has been in use for a long period of years, has been construed by the Courts, and the mining world is familiar with the same.* A strict construction of the wording of this order would require all of the field notes to be written in the patent. I am of the opinion that this was not the intention of the order.

"At the time of the receipt of this order, there was about sixty patents ready to be issued and as they contained the number of the survey, the section and township in which they are located, the course and distance of all the boundary lines, location of the main discovery shaft and the intersection with all other surveys, in addition to corner No. 1 being tied to either a section corner or a mineral monument, I am of the opinion that these patents ought to be issued without being rewritten."

Also a certified photostat copy (printed as Appendix D hereto) of a communication from the Commissioner to the Secretary, under date of August 31, 1904, in which, after quoting the order contained in the Acting Secretary's communication of August 8, 1904, and incorporating the suggestion of the Recorder in respect of the sixty pending patents, he asked for more specific instructions, saying further:

Also a photostat copy (printed as Exhibit E hereto) of the reply of the Acting Secretary, under date of September 2, 1904, wherein he said:

> "Briefly, it may be said that it is not the desire of the Department that all the field notes of a mineral survey shall be inserted in the patent itself, but that, in addition to the specific description of the claim concerned, or designation of its *locus*, by course and distance of tie and boundary lines, there shall be inserted in the patent an additional description according to the reported definition and demarcation of the claim upon the ground. *It is the evident intention under the statute that the patent itself shall contain sufficient data to enable the patentee (if he faithfully observes the requirements under the law and official regulations with respect to the demarcation of the boundaries of his claim by particular monuments) to establish the real locus of his claim, in the event of dispute, without the necessity of recourse to records on file in the Land Department.* A patentee who does not observe those requirements and preserve his prescribed monuments may, however, be left to procure and rely upon certified copy of the official field notes of survey.
>
> *"Your office will therefore insert in every mineral patent, in addition to the data included therein under the present practice,* an adequate and accurate description of each of the monuments reported in the official field notes as defining the boundaries of the claim for which patent is to issue, and to state, at the appropriate

point in the instrument, the particular corner so reported to be marked or witnessed on the ground by each such monument, as for example:

"Beginning at corner No. 1, a granite stone, 6 x 6 x 60 inches, marked 1-9999, in mound stones, whence, etc.

"As stated in the former letter of the Department, in the absence of necessary report with respect to any such required monuments, patent will be withheld until such data is properly supplied.

"The foregoing requirements will apply to all mineral patents not yet prepared for issuance; and the departmental direction of the 8th ultimo, with respect to patent descriptions, is modified to conform hereto."

The practice of omitting reference to corner monuments in mineral patents thus prevailed from April 28, 1891, until September 2, 1904. It appears from the Annual Reports of the Commissioner of the General Land Office that during the fiscal years 1892-1904 (July 1, 1891, to June 30, 1904) 20,966 mineral patents were issued, which, with the exception of a few placers by legal subdivisions, contained such abbreviated descriptions of boundaries, omitting reference to official corner monuments.

It will be observed that under such practice it was entirely fortuitous which corner monument, if any, other than that at Corner No. 1, was mentioned, depending entirely upon which corner happened to be nearest a public survey corner or U. S. mineral monument and took the tie thereto.

In the case of the Conkling claim it fortuitously happened that corner No. 2 was nearest the U. S. mineral monument and received the tie thereto, so that the monuments at corners Nos. 3 and 4 were not mentioned in the patent.

Obviously, in these condensed or abbreviated descriptions, references to corners, without express mention of the monuments marking them, intend the corners as monumented.

(We are not concerned here with cases where the surveyor returns in his field notes that it was impracticable to place a monument at a particular corner.)

And as it is the officially surveyed and monumented lot which the statute specifies as the subject of patent proceedings, and to which, and to which only, the jurisdiction of the Land Department attaches, and the function of patent is merely to add the bare legal title to the equitable title which passes by reference to name and lot number, discrepancies between the courses and distances and the positions of the monumented corners as established on the ground—of surprisingly frequent occurrence, especially in early surveys (Sinnot v. Jewett, 33 L. D. 91)—cannot operate either to expand or contract the boundaries of the claim or lot as fixed by the official corner monuments.

Resort to the general rule that monuments control as against courses and distances is not necessary. It is not a question of *intent*. It is purely and solely a question of identification of the official corner monuments delimiting the *res*, or of the positions originally occupied by them, if they have disappeared.

The so-called Brooks Act of 1904 (April 28, 1904, 33 Stat. 545) amending R. S. 2327, was merely reiterative of the provisions of R. S. 2325 as to official monuments, and declaratory of existing law.

It is only when corner monuments and witness objects have disappeared or are in doubt that the courses and distances function, and even then, not as fixing the boundaries of the officially surveyed claim or lot, but merely as aids in establishing the true positions in which the official monuments were placed.

And a controversy as to the genuineness of a monument alleged to be the official monument or as to the original and true position of the official monument, raises merely

an issue as to which the ordinary rules of evidence and burden of proof apply, and which, in case of doubt, is to be resolved by a fair preponderance of the evidence.

This was well stated by Judge Sanborn in delivering the opinion of the Circuit Court of Appeals for the 8th Circuit, in Resurrection Gold Min. Co. v. Fortune Gold Min. Co., 129 Fed. 668, although there, as in the instant case, he did not approach the question with full appreciation of the nature of a mineral patent. There, the condensed description of the boundaries in the patent referred to corners Nos. 2, 3 and 4, without mentioning the official posts or monuments, but, contrary to the ruling of the same Court in the instant case (Judge Sanborn also sitting), the field notes were held properly in evidence as incorporated in the patent by reference. It is also to be noted that in the Resurrection-Fortune case the owner of the claim invoked what he contended was the original post No. 3 in position as establishing his boundaries beyond the calls (courses and distances) of the condensed description in the patent. In that case Judge Sanborn said, at page 671:

> "In cases of this character the original monuments called by the patent, if they still remain in place, prevail over the courses and distances noted in the description. If the monuments called have been lost or removed the places where they were originally located may be shown by parol or other competent evidence, *and if proved to the satisfaction of the jury by a fair preponderance of the evidence*, these original locations will prevail over the courses and distances, and control the application of the description to the land (citing cases). If the monuments are lost or removed and their original locations are not established by competent proof, the courses and distances prevail, and control the description."

The Conkling Patent and the Misapprehension of the Circuit Court of Appeals in Respect of the Locus Conveyed

The Conkling patent, issued in 1892, appears in full in the record (Ex. 1, J. W. C.). In the opinion of the Circuit Court of Appeals it is set out in fragments in a manner to magnify the description by courses and distances, omitting mention of the official monuments at corners Nos. 3 and 4, and minimize the description by lot number and reference to field notes, etc., all of which appear in the recitals. The grant is of "the said mining premises hereinbefore described" and the portion of the Conkling vein and all other veins within the surface boundary lines of "said granted premises in said lot No. 689," etc.

That this may be clear, so much of the Conkling patent as is pertinent is here set out:

General Land Office
No. 19811

Mineral Certificate
No. 1697

THE UNITED STATES OF AMERICA

To all to whom these presents shall come, greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States * * * *there have been deposited* in the General Land Office of the United States the *Plat* and *Field Notes of Survey* and the *Certificate No. 1697, of the Register of the Land Office* at Salt Lake City, in the territory of Utah, accompanied by other evidence, *whereby it appears* that the "Boss Mining Company" did on the twenty-ninth day of December, A. D. 1890, *duly enter and pay for* that certain *mining claim or premises known as the Conkling lode mining claim, designated by the Surveyor General as lot No. 689,* embracing a portion of the unsurveyed public domain, in the Uintah Mining District, in the County of Summit, and territory of Utah, described and platted as follows, with magnetic

variation seventeen degrees and twenty minues east:

"Beginning at corner No. 1 a pine post four inches square marked 'U. S. 689 P. 1,' thence first course, north twenty-one degrees and nine minutes west three hundred feet to discovery point, six hundred feet to corner No. 2, a pine post four inches square marked 'U. S. 689 P. 2,' being also corner No. 4 of lot No. 191, the Lincoln lode claim, and corner No. 2 of lot No. 580, the Pirate King Lode claim, from which U. S. Mineral monument No. 4 bears north thirty-two degrees and fifty-two minutes west nine hundred and thirty-nine and three-tenths feet distant, and a pine tree four inches in diameter marked 'U. S. 689 P. 2 B. T.' bears north thirteen degrees west twenty-eight feet distant.

"*Thence second course*, south sixty degrees and forty-five minutes west one thousand five hundred feet *to corner No. 3.*

"*Thence third course*, south twenty-one degrees and nine minutes east six hundred feet to *corner No. 4.*

"Thence fourth course, north sixty degrees and forty-five minutes east one thousand five hundred feet to corner No. 1, the place of beginning—said lot No. 689 extending one thousand five hundred feet in length along said Conkling vein or lode, and containing twenty acres and forty-five hundredths of an acre of land more or less."

Now know ye that *there is hereby granted* by the United States unto the said "Boss Mining Company" and to its successors and assigns, *the said mining premises hereinbefore described*, and not expressly excepted from these presents, and all that portion of the said Conkling vein, lode, or ledge, and of all other veins, lodes, and ledges, throughout their entire depth, the tops or apexes of *which lie inside of the surface boundary lines of the said granted premises in said lot No. 689," etc.*

The trial Court (Marshall, J.) with an accurate concep-

tion of the function of mineral patent, in its opinion, said (R., p. 258):

> "The patent purports to convey lot No. 689 as designated by the Surveyor General, and the description by metes and bounds is but an attempt to properly describe this lot. Now, if in applying this description to the ground, it be found that there is a conflict between the position of the lot as so designated and the ground included by giving effect to the call for distances, the ambiguity at once arises, and it arises not by importing into the patent what is not called for but from the mere ascertainment of the meaning of the patent calls. In view of this conflict which call is to prevail? The survey and official marking of the lot is preliminary to the application for patent. *The notice given to adverse claimants is of a claim to the ground so marked. The intent to convey by patent that ground and only that ground is apparent.* This is the ordinary rule where land is described by an official lot number and by metes and bounds varying therefrom."

This is in accord with the foregoing analysis and exposition of the nature of the proceedings culminating in mineral patent, in accord with the general understanding of the mining world, and in accord with the understanding and practice of the Land Department.

The decision of the Circuit Court of Appeals to the contrary in the instant case has cast a cloud upon the title to thousands of mining claims, patented and unpatented, whose owners, relying upon the boundaries of adjoining or conflicting claims as originally marked by the locators thereof and later officially monumented, did not adverse applications for such adjoining or conflicting claims, the patents for which, thereafter issued during the period between 1891 and 1904, contained such condensed descriptions of boundaries, omitting reference to official corner monuments;

and leaves the Land Department embarrassed in adminstering the law, when called upon to determine the boundaries of such patented mining claims, in passing upon applications for claims adjoining or conflicting therewith, and in segregating such patented claims in the general public surveys.

The fundamental error of the Circuit Court of Appeals is in their assumption (230 Fed. pp. 558-559) that when the Commissioner of the General Land Office, with the record sent up by the local officers before him, proceeded to perform the purely ministerial act of issuing patent, he had power, and intended, to adjudicate the boundaries of the ground to which the applicant was entitled and, in doing so, to reject the boundaries as officially monumented and, by omitting mention of the official monuments at corners Nos. 3 and 4, grant the applicant 135 feet in length in excess thereof.

This error underlies the effective ruling (pp. 559, 560) that the field notes and evidence as to the corner monuments were incompetent, as well as to the argument (pp. 560-561) that the result would be the same even if the field notes and other evidence could be regarded as competent, and the final suggestion (p. 561):

> "And finally the proof that the westerly posts of the official survey upon which this patent was granted were originally set 1,364.5 feet distant from the easterly line of the claim is not of that certain and satisfactory character which would warrant a Court in avoiding, so many years after the issue of the patent, the grant which the United States clearly made. The defendants cannot deprive the plaintiff of the land described in his patent by means of the proof of the finding of these old posts which was introduced in this case."

The Circuit Court of Appeals thus regarded the case pre-

sented as an attempt to set aside, or reform, the patent on the ground of mistake. But, obviously, if the patent was, as conceived by it, in fact and law, an absolute grant of 1500 feet in length, it could not be so attacked collaterally. It could be attacked for mistake only in direct proceedings by the United States.

But the case here is not one of attempted collateral attack upon a grant. The question is simply and purely the familiar one of identifying the official corner monuments in place marking the boundaries of the grant, to which the ordinary rules, requiring only a fair preponderance of evidence, apply.

The trial court regarded the identity of the official monuments in place as conclusively established (see opinion in record). The Circuit Court of Appeals did not take issue with that finding, or itself make any finding as to the fair preponderance of the evidence, but merely held that that evidence was not sufficient to set aside (reform) the patent which, as construed by it, was a grant of the 135 feet in dispute without regard to the monuments, so that this Court is not confronted with a ruling by the Circuit Court of Appeals on the question of fact, but may accept the finding of the District Court or examine the evidence, which is practically uncontroverted.

II.

THE QUESTION OF EXTRALATERAL RIGHT ON A CROSS-VEIN

This question is presented in such wise as to call for a decision by this Court in order that the law of that subject may be settled.

The District Court found as fact that the ore body in dispute was part (on its dip) of the Crescent fissue vein which apexed as a vein crossing the side lines of the

Monroe Doctrine, Cumberland and Constitution patented claims (see diagram) and that there was no longitudinal vein at the designated discovery points or elsewhere disclosed on those claims, and held that under those conditions extralateral right attached to that cross-vein and the side lines became end lines for the purpose.

The decision of the Circuit Court of Appeals (230 Fed. 561, et seq.) reversing the trial court on this question, resolves into the following propositions:

1. That the only exception to the rule that the end lines as placed by the locator govern extralateral right, arises where the locator actually discovers a vein at the time of location and, *mistaking the direction of its course*, lays the lines of his location across instead of along that vein.

2. That the legal presumption is that the locator of a claim *thinks*, at the time of location, that he has discovered a vein in his discovery cut running longitudinally with the lines of his location as laid by him.

3. That the issuance of patent raises a presumption of a longitudinal vein through the center of the claim.

4. That if it appears that there was and is no vein in the designated discovery cut, the burden is on the party claiming extralateral right on a cross-vein elsewhere on the claim, to rebut the presumptions aforesaid and establish that such cross-vein or some other cross-vein was in fact the discovery upon which the location was predicated and that at the time of location the locator mistook the direction of the course of such vein.

5. That in the absence of direct proof of the mental state of the locator in respect of belief in the discovery of a vein or in respect of the course of a vein then actually discovered and made the basis of the location, the necessary element of *mistake* on the part of the locator may be predicated upon, or raised out of, the physical facts only in case

the absence of a longitudinal vein in or underneath the designated discovery cut or elsewhere on or in the claim, be demonstrated—that is, the possibility of the existence of such a longitudinal vein positively and conclusively eliminated.

The ultimate ruling of the Circuit Court of Appeals was that in the absence of direct proof as to the mental state of the locators of the three claims, proof that the designated discovery pits were only three to five feet deep and in wash (not rock in place), that the whole surface of the claims was wash to the depth of 20 to 40 feet, and that at numerous places beneath the surface where tunnels had been run and where explorations had been made no longitudinal vein had been found, was not sufficient demonstration of the absence of any such vein, because the portion of the ground explored was but a small percentage of the entire ground beneath the surface of the claims, and, therefore, not demonstrative of mistake on the part of the locator in believing that there was a disclosed or undisclosed longitudinal vein.

The view of the Circuit Court of Appeals thus seems to be that if a locator knowingly and deliberately locate his claim across the vein he discovers and predicates his location upon, he deprives himself of extralateral right on that or any other cross-vein—in other words, the element of mistake is lacking; or if he make location before discovering any vein, he, likewise, by reason of the presumption of a longitudinal discovery vein, deprives himself of extralateral right on any cross-vein afterward discovered—the element of mistake being lacking.

The primary question presented is, therefore, whether the mental state of the locator at the time of location is the controlling element or at all material, or whether the physical facts alone control; and whether, as involved in the

question of extralateral right, there is any legal presumption of a longitudinal discovery vein fixing the located end lines as the measure of extralateral right on any and all veins.

In Flagstaff Mining Co. v. Tarbet, 98 U. S. 463, this Court stated and settled the general rule that the side lines become end lines in case the vein crosses the location. There, as also in Argentine Mining Co. v. Terrible Mining Co., 122 U. S. 478, and King v. Amy, etc., Min. Co., 152 U. S. 222, the cross-vein was the discovery vein. In none of those cases was it suggested that the sanction for the rule was mistake.

There is now presented the case of a cross-vein, not at the designated discovery point, but which is the only known vein in the claim. The language of this Court in the three cases cited would seem to apply equally to such case and, if so, the decision of the Circuit Court of Appeals is in conflict therewith.

The broader proposition that extralateral right attaches to each and every vein apexing in a location, to be measured by the set of lines which it happens to cross, would be no greater departure from the strict letter of the statute than the rule announced in those three cases, and would seem to follow from the language of this Court in Del Monte Min. Co. v. Last Chance Min. Co., 171 U. S. 55, and Jim Butler Tonopah Min. Co. v. West End Cons. Min. Co. (Adv. Ops. July, 1919), read in connection with its language in the three cases cited; and, if announced by this Court, would eliminate any distinction as to discovery and secondary veins, and put the question of extralateral right on a clear and positive basis.

Respectfully submitted,

WILLIAM C. PRENTISS.

as *amicus curiae*.

APPENDIX A

Copy.

DIRECTIONS FOR THE PREPARATION OF MINERAL PATENTS

1. Give all markings and bearings at corner No. 1 and the corner to which the claim is tied to a monument or corner of the public surveys: omit all markings and bearings at other corners.

2. Give all intersections with lines of *executed foreign* surveys and give bearing to corner when one end of the line is within the location being described: omit intersections with foreign surveys *not executed*.

3. In cases where two or more lodes or locations are embraced in one claim and entry, the description of the claim in the patent need not, in running any line of the claim, mention the interesections with any other line of the claim, care being taken, however, to have a connection shown of each location with the M. M. or corner of public survey, to which the claim is tied, and it is not necessary that the area of each separate location be given.

4. Each patent must be a good and sufficient description of the claim particularly as to exclusions, without requiring a plat to be inserted by way of explanation, and no reference to such plat will be made in the patent.

H. G. POTTER,
Chief Mineral Division, G. L. O.

April 28, 1891.

APPENDIX B

"B"
A.B. 4-207

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.

September 19, 1919.

I hereby certify that the annexed copy of letter, is a true and literal exemplification from the record on file in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL]

C. M. BRUCE,
Assistant Commissioner of the General Land Office.

Barclay.

5434-1903. F. H. B.
August 8, 1904.

The Commissioner of the
General Land Office.

SIR:

The Department is in receipt of communication from your office, dated July 19, 1904, submitting for consideration here draft of proposed amendment of paragraph 147 of the official mining regulations. The Department has deemed it necessary to make certain changes in the draft submitted; and the paragraph in question, amended to read as follows, is hereby approved:

147. If an official mineral survey has been made in the vicinity, within a reasonable distance, a further connecting line should be run to some corner thereof; and in like manner all conflicting surveys and locations should be so connected, and the corner with which connection is made in each case described. Such connections will be made and conflicts shown according to the boundaries of the neighboring or conflicting claims as each is marked, defined, and actually established upon the ground. The mineral surveyor will fully and specifically state in his return *how* and by what *visible evidences* he was able to identify on the ground the several conflicting surveys and those which appear according to their returned tie or boundary lines to conflict, if they were so identified, and report errors or discrepancies found by him in any such surveys. In the survey of contiguous claims which constitute a consolidated group, where corners are common, bearings should be mentioned but once.

In this connection it may be remarked that a mineral patent is with the record in a mining case on appeal here, in which but one monument, stated therein to be situate at corner No. 1 of the claim there in question, is found to be mentioned, notwithstanding four monuments are referred to and described in the report of the deputy mineral surveyor accompanying the approved survey of the claim, as marking the four corners of the claim upon the ground. It has also been informally reported to the Department that the practice has prevailed in your office, to a greater or less extent, of issuing mineral patents in which no mention whatever is made of any of the monuments reported and described by the deputy mineral surveyors.

Your attention is directed to the requirements under section 2325, Revised Statutes, that an applicant for mineral patent shall file with his application—

a plat and field notes of the claim or claims in common,

> made by or under the direction of the United States Surveyor General, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground,—

and that within the sixty-day period of publication he shall file a certificate of the Surveyor General—

> that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, *to be incorporated in the patent.*

In view of the foregoing, and of the provisions of the mining regulation pursuant thereto, it is to be observed that the practice referred to is unauthorized and unwarranted. Hereafter, *your office will be careful to include in every mineral* patent an adequate and accurate description of each of the monuments reported in connection with the survey of the claim for which the patent is to issue, and to state at the appropriate point in the instrument the particular corner reported to be marked or witnessed on the ground by each monument and will also include therein such additional bearings as may be reported in connection with any such monuments, description of reported points of intersection with other approved surveys, and, generally, all data with respect to the designation of the actual *locus* of the claim prescribed under or in connection with paragraphs *34, 36, 38, 48, 143, 144, 145, 146,* and 154 of the mining regulations, as far as set forth in the report of the mineral surveyor. This requirement will apply to all mineral patents not yet issued from your office. In any case in which the report of a deputy mineral surveyor should contain no mention and description of monuments as defining the boundaries of a claim upon the ground, *patent will be withheld until the*

claim shall be shown to have been so defined, as required by the law, and official regulations, and the monuments are particularly described in a supplemental report, duly approved by the Surveyor General.

Very respectfully,

(Signed) THOS. RYAN,
Acting Secretary.

APPENDIX C

"B"
A.B. 4-207

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.

September 19, 1919.

I hereby certify that the annexed copy of letter is a true and literal exemplification from the record on file in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL]

C. M. BRUCE,
Assistant Commissioner of the General Land Office.

1904-B.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.

Address only the
Commissioner of the General Land Office.

August 27, 1904.

The Commissioner of the
General Land Office,
Washington, D. C.

SIR:

Regarding the order of the Honorable Secretary of the Interior dated August 8th, directing a change in the form

of mineral patents, I have the honor to report that the present form has been in use for a long period of years, has been construed by the courts, and the mining world is familiar with the same. A strict construction of the wording of this order would require all of the field notes to be written in the patent. I am of the opinion that this was not the intention of the order.

At the time of the receipt of this order, there was about sixty patents ready to be issued and as they contained the number of the survey, the section and township in which they are located, the course and distance of all the boundary lines, location of the main discovery shaft and the intersection with all other surveys, in addition to corner No. 1 being tied to either a section corner or a mineral monument, I am of the opinion that these patents ought to be issued without being rewritten.

After careful inquiry and investigation, I am of the opinion that all of the facts were not before the Department, and that only slight changes were intended. I therefore recommend that the Honorable Secretary be requested to suspend this order until the matter can be given further consideration.

Respectfully,

C. H. BRUSH,
Recorder.

FEM.

APPENDIX D

"B"
A.B. 4-207

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.

September 19, 1919.

I hereby certify that the annexed copy of letter is a true and literal exemplification from the record on file in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL]

C. M. BRUCE,
Assistant Commissioner of the General Land Office.

1904-B.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.

C.H.B.

Address only the
Commissioner of the General Land Office.

August 31, 1904.

The Honorable,
Secretary of the Interior,
Washington, D. C.

SIR:

Your order of August 8th, regarding the change in paragraph 147 of the mining circular, contains in addition thereto, the following:

"Hereafter, your office will be careful to include in every mineral patent an adequate and accurate description of each of the monuments reported in connection with the survey of the claim for which the patent is to issue, and to state at the appropriate point in the instrument the particular corner reported to be marked or witnessed on the ground by each monument, and will also include therein such additional bearings as may be reported in connection with any such monuments, descriptions of reported points of intersection with other approved surveys, and, generally, all data with respect to the designation of the actual *locus* of the claim prescribed under or in connection with paragraphs 34, 36, 38, 48, 143, 144, 145, 146, and 154 of the mining regulations, as far as set forth in the report of the mineral surveyor. This requirement will apply to all mineral patents not yet issued from your office."

This order if carried out literally, might require the insertion in the patent, of substantially all the field notes reported by the deputy surveyor. Upon informal inquiry at the Department, I find that it was not the intention that this should be done, as the phraseology includes more than was contemplated at the time of the issuance of the order. I therefore request that more specific instructions be given regarding the descriptions which it may be thought essential to be included in the patent.

At the time this order was received there was about sixty patents, all written ready for issue, and as they contained the number of the survey, the section and township in which they are located, the course and distances of all the boundary lines, location of the main discovery shafts and the intersections with other surveys, in addition to corner No. 1 being tied to either a section corner or a mineral monument, I am of the opinion that these patents ought to be issued without being rewritten, and suggest that the order be modified to that extent.

Respectfully,

J. H. FRINGLE,
Commissioner.

FEM.

APPENDIX E

"B"
A.B. 4-207

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.

September 19, 1919.

I hereby certify that the annexed copy of letter is a true and literal exemplification from the record on file in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL]

C. M. BRUCE,
Assistant Commissioner of the General Land Office.

DEPARTMENT OF THE INTERIOR
Washington.

5434-03. F.H.B.
F.L.C.

September 2, 1904.

The Commissioner of the
General Land Office.

SIR:

The Department is in receipt of your office letter (B) of the 31st ultimo, in which, referring to departmental direction of the 8th ultimo (filed in N, see 331-D, 187) with respect to items of description of a mining claim to be inserted in the patent therefor, it is suggested that the

"order, if carried out literally, might require the insertion in the patent of substantially all the field notes reported by the deputy surveyor;" and more specific instructions in the matter are asked.

Briefly, it may be said that it is not the desire of the Department that all the field notes of a mineral survey shall be inserted in the patent itself, but that, in addition to the specific description of the claim concerned, or designation of its *locus,* by course and distance of tie and boundary lines, there shall be inserted in the patent an additional description according to the reported definition and demarcation of the claim upon the ground. It is the evident intention under the statute that the patent itself shall contain sufficient data to enable the patentee (if he faithfully observes the requirements under the law and official regulations with respect to the demarcation of the boundaries of his claim by particular monuments) to establish the real *locus* of his claim, in the event of dispute, without the necessity of recourse to records on file in the Land Department. A patentee who does not observe those requirements and preserve his prescribed monuments may, however, be left to procure and rely upon certified copy of the official field notes of survey.

Your office will therefore insert in every mineral patent, in addition to the data included therein under the present practice, an adequate and accurate description of each of the monuments reported in the official field notes as defining the boundaries of the claim for which patent is to issue, and to state, at the appropriate point in the instrument, the particular corner so reported to be marked or witnessed on the ground by each such monument, as, for example:

> Beginning at corner No. 1, a granite stone, 6 x 6 x 60 inches, marked 1-9999, in mound of stones, whence, etc.

As stated in the former letter of the Departmen
absence of necessary report with respect to any
quired monuments, patent will be withheld until su
is properly supplied.

The foregoing requirements will apply to all
patents not yet prepared for issuance; and the depa
direction of the 8th ultimo, with respect to patent
tions, is modified to conform hereto.

Very respectfully,

THOS. RY
Acting Se

nent, in the
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all mineral
epartmental
ent descrip-

RYAN,
Secretary.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

SILVER KING COALITION MINES COMPANY, a Corporation, petitioner,
v.
CONKLING MINING COMPANY, A CORPORATION, respondent.

No. 489.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MEMORANDUM OF THE SOLICITOR GENERAL ON THE MOTION TO DISMISS THE WRIT OF CERTIORARI.

The Solicitor General has been served with a copy of the motion to revoke the grant of the writ of certiorari in the above-stated case, and notices in the exhibit thereto a question as to the source of the suggestion made by the United States that the writ be granted as involving matter of public interest, and one in which the United States was specially interested.

That the question may be answered, the Solicitor General says that the said suggestion was prepared in his office wholly as the result of a communication addressed by Hon. Alexander T. Vogelsang, First Assistant Secretary of the Interior, to the Attorney General, setting forth the pendency of the petition